

REMARKS

Reconsideration and allowance of the present application in view of the following remarks are respectfully requested. The present claims require a generally liquid permeable, non-apertured cover sheet and a generally liquid impermeable back sheet wherein the back sheet has a water vapor transmission rate that is at least about 20% of a water vapor transmission rate of the cover sheet.

Amendments have been made to the specification and claims with respect to the term MOCON, as requested in the Office Action.

In the Office Action, claims 1-3, 5, 6, and 8-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,514,602 to Zhao et al., in view of U.S. Patent No. 6,663,611 to Blaney et al., in view of U.S. Patent No. 6,232,521 to Bewick-Sonntag et al., and further in view U.S. Patent No. 5,613,964 to Grenier. However, it is respectfully submitted that the presently pending claims are not taught or suggested by the cited references.

In this regard, the Office Action acknowledges that Zhao et al. fails to disclose a back sheet having a water vapor transmission rate that is at least about 20% of the water vapor transmission rate of the cover sheet. Blaney et al. was cited to remedy this deficiency. However, as also acknowledged in the Office Action, Blaney et al. describes an absorbent article having an outer cover 16 (so-called cover sheet) that has a water vapor transmission rate that is at least about 20% of the water vapor transmission rate of the inner laminate 50 (so-called back sheet). In other words, Blaney et al. describes the opposite arrangement from that claimed.

Despite this fact, the Office Action indicates that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the back and cover sheets having the claimed WVTR since one of ordinary skill in the art would only have to reverse the configuration taught by Blaney to obtain the claimed limitation.” Such a position completely ignores the fact that not only does Blaney et al. explicitly teach away from the claimed limitation, but there is no motivation to reverse the configuration in the manner suggested.

It is improper to use a patent applicant’s own specification to provide the only suggestion for modifying the prior art. The Federal Circuit has repeatedly warned against using the Applicant’s disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art. Thus, the mere fact that the prior art may be modified in the manner suggested by the Office Action does not make the modification obvious unless the prior art suggested the desirability of the modification.

Here, the claims require the back sheet to have a water vapor permeability of at least about 20% of that of the cover sheet. In this regard, the respective permeabilities are selected such that entrapped air may eventually escape from the article upon flushing regardless of the orientation of the article of the wearer. Page 10, lines 25-27 of the specification. There is simply no teaching or suggestion in Blaney et al. for the modification suggested in the Office Action.

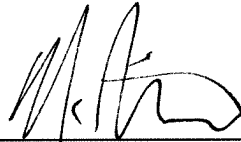
Plainly, the Office Action’s only incentive or motivation for so modifying Zhao et al. using the teachings of Blaney et al. in the manner suggested in the Office Action results from using Applicants’ disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art, which is improper under 35 U.S.C. §

103. As such, it is respectfully that the presently pending claims patentably define over the cited references.

For at least the reasons discussed above, Applicant respectfully submits that the present application is in complete condition for allowance, and favorable action, therefore, is respectfully requested. Should any issues remain after consideration of this amendment, then Examiner Chapman is invited and encouraged to telephone the undersigned at her convenience.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Neil M. Batavia', is written over a horizontal line.

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